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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
Federal Communications Commission
Washington, D.C. 20554

In re Applications Of)	Docket No. <u>MM 93-42</u>
)	
MOONBEAM, INC.)	File No. BPH-911115MG
)	
GARY E. WILLSON)	File No. BPH-911115MO
)	
For a Construction Permit for a)	
New FM Station on Channel)	
265A in Calistoga, California)	

Opposition to Third Petition to Enlarge

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July 30, 1993

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SUMMARY

In his third enlargement petition, Willson continues his strategy of searching Moonbeam's application materials for microscopic inconsistencies and ambiguities and mischaracterizing them as intentional misrepresentations. Here, Willson alleges that Moonbeam and Ms. Constant have misrepresented matters regarding spousal broadcast interests, past local residence, involvement in Mr. Constant's businesses, Main Studio location, civic involvement, Mr. Constant's involvement in Moonbeam's application, and local employment. Moonbeam herein demonstrates that Willson's scattershot attacks lack all substance and merit, and indeed, contains material misrepresentations. Virtually all of the matters addressed are irrelevant, misconstrued, or duly corrected by Moonbeam prior to the filing of Willson's petition.

Similarly, to the extent Moonbeam's application contained discrepancies, these are insufficient to warrant an ineptness issue, since the matters concerned were insignificant, the discrepancies inadvertent, and for the most part, voluntarily and promptly corrected.

In addition, much of Willson's petition should be dismissed or stricken as untimely, because he knew or reasonably could have discovered the facts previously, and because he has not justified his untimeliness as required by Section 1.229. Finally, Moonbeam objects to Willson's discovery requests as overbroad and irrelevant.

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To: The Honorable Edward Luton
Administrative Law Judge

Opposition to Third Petition to Enlarge

Pursuant to Section 1.229 of the Commission's Rules, Moonbeam, Inc. ("Moonbeam"), by its attorneys, respectfully opposes Gary Willson's Third Petition to Enlarge Issues, filed July 8, 1993, and supplemented July 20, 1993, stating in support thereof as follows:

Preliminary Statement

1. Moonbeam and Willson are competing applicants for a new FM station on Channel 265A at Calistoga, California. The Presiding Officer heard oral testimony on the standard comparative issues on July 21 and 22, 1993.

2. Pursuant to Section 1.229, motions to enlarge the issues in a comparative broadcast proceeding are to be filed by thirty ("30") days after the release of the Hearing Designation Order. The filing period for such motions expired on April 7, 1993.

3. On July 8, 1993, Willson filed his Third Petition to Enlarge Issues, which he supplemented on July 20, 1993 ("Willson 3Pet." and "3Pet. Supp.," respectively). Willson seeks the addition of misrepresentation or carelessness issues against Moonbeam with regard to the following subjects:

- past local residence;
- non-disclosure of spousal broadcast interests;
- involvement of Moonbeam's sole shareholder's spouse in Moonbeam's application;
- involvement of Moonbeam's sole shareholder in her spouse's broadcast-related businesses;
- membership in the Calistoga Performing Arts Association;
- Moonbeam's main studio location; and
- status of Ms. Constant's Realtor's license.

4. As demonstrated below, Willson's allegations are, in large part, misleading and frivolous. The remainder are based on ambiguities, non-statements and trivial errors. Further, Willson's petition should be dismissed, in whole or in part, as untimely. Finally, Moonbeam objects to Willson's proposed discovery requests, set forth at Exhibit 9 to his petition.

ARGUMENT

I. WILLSON'S "MISREPRESENTATION" ALLEGATIONS LACK SUBSTANCE

5. Willson's strategy in this proceeding has been a scattershot attack on minor errors in Moonbeam's application and supporting papers, many of which Moonbeam corrected before the filing of any

petition, and in some cases corrected long before. He points to amendments and revisions as proof that the original document or response was fabricated, and construes responses to his own counsel's ambiguous deposition questions as "proof" that a dishonest answer was given to questions which weren't quite asked. Still others of his allegations are materially false or misleading.

6. This is not the first time Willson's counsel has employed this strategy. In *Garrett, Andrews & Letizia, Inc.*, 86 FCC 2d 1172 (Rev. Bd. 1986), Mr. Gammon employed the same strategy. The Review Board rejected this "litigation over trivia," 86 FCC 2d at 1176 citing *Revised Processing of Broadcast Application*, 72 FCC 2d 202, 221 (1979) stating that:

GAL was grasping at straws which yielded only chaff . . . the mere existence of application discrepancies [do not] demonstrate a willingness to deceive or otherwise warrant the addition of a misrepresentation issue. A willingness to deceive may be disclosed by immaterial deceptions, but the burden is on the petitioner to make a prima facie demonstration of deception and of a desire, motive or logical reason to mislead in order to have an issue added. The Commission will not infer deceptions or improper motives from an enumeration of alleged application errors, omissions, or inconsistencies, accompanied by speculation and surmise but lacking factual support. That is all that GAL had.

86 FCC 2d at 1180. Significantly, among the allegations at issue in the Garrett case were, as here, local residence and main studio location. The mere comparative value of these subjects was not alone considered sufficient to demonstrate motive to deceive. *Id.*, *passim*.

7. As in *Garrett, supra*, Willson's laundry list of Moonbeam's alleged "misrepresentations" cannot withstand scrutiny. Taken singly or together, none of the alleged "misrepresentations" raise a substantial and material question of fact warranting the addition of issues against Moonbeam. *See Astroline Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C.Cir. 1988). Most significantly, none of the allegations evidence the intent to deceive or conceal which "is at the heart of misrepresentation cases." *See Central Texas Broadcasting Co., Ltd.*, 92 FCC 2d 914, 916 (Rev. Bd. 1982) (citations omitted); *Ramon Rodriguez & Assoc., Inc.*, 7 FCC Rcd 2633 (1992).

**A. ACQUISITION OF CONSTRUCTION PERMIT
IN IDAHO BY MR. CONSTANT IS IRRELEVANT**

8. Representative of the abject lack of merit in Willson's petition is his allegation that Ms. Constant sought to conceal her husband's January, 1993, acquisition of a construction permit in Ketchum, Idaho.

9. In a good faith effort to report any information which might be salient to the case, Moonbeam prepared and on July 21, 1993, filed a petition to amend its application, reporting the acquisition by Mr. Constant. A copy of the amendment is attached as Exhibit 1 hereto.¹

10. Upon closer review of Moonbeam's application, it is plain that Willson's entire argument is a red herring designed to mislead Moonbeam and the Presiding Officer. Willson has materially misrepresented the requirements of Form 301. The plain language of the application form indicates that Moonbeam was *never* required to report Mr. Constant's Ketchum, Idaho CP acquisition. Attached as Exhibit 2

¹ To Moonbeam's knowledge, Willson has not opposed the petition, which was hand-served on his counsel.

are copies of the pages of Moonbeam's original application, its March 2, 1992 amendment, and the FCC Form 301 currently in use which set forth the questions regarding family media interests. As the plain text unequivocally states, only media acquisitions *in the same area* as the applicant's proposed station need be reported. Not even under the Commission's rules are Ketchum, Idaho and Calistoga, California in the "same area." See § 73.3555(c).

11. In short, Willson has egregiously sought to deceive the Presiding Officer and, indeed, the Commission regarding the need to enlarge issues in this case. The accompanying waste of resources is the inevitable and desired result of Willson's strategy in this case. Accordingly, at a minimum, the petition should be denied.

B. PAST LOCAL RESIDENCE WAS CORRECTED

13. Willson now seeks a misrepresentation issue on the basis of Ms. Constant's original faulty recollection, which Moonbeam corrected *months* before the filing of Willson's petition.

14. The request is, very simply, absurd. Moonbeam's voluntary correction specifically negates the existence of any intent to deceive, which the Review Board recognized in *International Radio, Inc.*, 98 FCC 2d 608, 639 (Rev. Bd. 1984). As stated therein,

Thus, there is much credibility to IRI's assertion that it "surely would not have attempted to deceive the Commission after placing in the hands of competitors documentation setting forth the accurate facts." . . . As we have said in prior cases, when accurate information previously supplied by a party is a matter of open Commission record, "an intent to categorically misrepresent . . . is difficult to find." (footnotes omitted)

In the same way, Moonbeam placed, uncoerced, the true facts in the Commission records. Willson nowhere explains why a party seeking to deceive the Commission would take such action. The only plausible explanation is that he cannot.

**C. WILLSON HAS PRODUCED NO EVIDENCE
THAT MARY CONSTANT WAS INVOLVED IN
FRED CONSTANT'S BUSINESSES**

15. Willson alleges that Ms. Constant perjured herself at deposition regarding her involvement with her husband's stations and ongoing businesses. In so doing, Willson outrageously distorts both the questions Ms. Constant was asked and the answers she gave.

16. The testimony Willson relies on, found on pages 57-58, 92 and 95 of Ms. Constant's deposition transcript,² consists of:

Page 57, line 16 through Page 58, line 9:

Q Were you an owner with him of any of these stations?

A No.

Q Were you an officer and director of any company which owned or might have owned these stations?

A No.

Q Were you employed?

A No.

MR. SHUBERT: Employed at the station?

BY MR. FITCH:

Q Yes, at the station or by any --

A I assumed you meant at the station.

Q -- or by any of these corporations?

A No.

Q Did you have any involvement with your husband's stations?

A None.

Page 92, lines 15 through 19:

Q Are you aware of a company called Mega Media?

A Yes.

Q Did you ever have any involvement at all with that company?

A I had no involvement with that company.

²Ms. Constant has corrected some of the foregoing testimony in her July 21, 1993 deposition corrections, a copy of which is attached hereto as Exhibit 4.

Page 95, lines 1 through 10:

Q Yes. What kind of contact, if any, have you had or involvement have you had with your husband's stations in the past?

A I've had no involvement with my husband's stations.

Q All right. And those stations, your husband's stations got into some financial trouble, didn't they?

A I am not -- I don't have information about the --

MR. SHUBERT: What's the relevance of it?

MR. FITCH: Well, she's already answered the question.

17. To prove that the foregoing testimony was false, Mr. Willson submits the following "evidence:"

- Ms. Constant's affidavit involving a *spousal* consent in connection with a loan to her husband's corporations being personally guaranteed by Mr. Constant (*see* Willson 3Pet., Exhibit 5 at 2-3), filed a suit against Mr. Constant personally;
- A post-judgment civil subpoena³ against Ms. Constant after a money judgment had been entered against her husband individually (*see* Willson 3Pet., Exhibit 6, *passim*); and
- Excerpted testimony from the same proceeding (in which Mr. Constant was being sued personally), reflecting that Ms. Constant was on the line during a call by her husband to the witness, who was his former employee (*see* Willson 3Pet., Exhibit 6, *passim*).

18. None of the foregoing documents reveal involvement by Ms. Constant's with the conduct of her husband's stations or businesses. Furthermore, the "testimony" on page 95 of the deposition transcript

³ The purpose of the subpoena was thus likely location of assets in aid of execution, *see e.g.*, Fed. R. Civ. p. 69.

Willson relies upon -- which Ms. Constant has now corrected, *see* Exhibit 4 -- was not testimony at all; it was the beginning of an answer which was interrupted by counsel's objection, as the transcript clearly shows. The attempt by Willson -- and his counsel -- to assert otherwise is at best, disingenuous.

19. Boiled down, Willson has not shown Ms. Constant to be involved in *any* aspect of the conduct of her husband's businesses' which was the reasonable interpretation of Mr. Fitch's question. The only "involvement" Willson has demonstrated concerns litigation -- an extraordinary event in the lives of non-lawyers -- in which the Constants' *joint personal assets* were at stake. No substantial or material issue has been raised, and Ms. Constant stands by her prior testimony.

D. MAIN STUDIO LOCATION

20. Willson has also here alleged that Moonbeam misrepresented in its application that Moonbeam's main studio would be located within the proposed station's 3.16 m/V contour, because Mary Constant testified at deposition that the main studio would be co-located with the studios of KFTY in Santa Rosa. Willson 3Pet. at 2, 7.

21. Ms. Constant did so testify, but as a result of anxiety,⁴ testified incorrectly. KFTY offered Moonbeam the use of its offices for a studio, and Moonbeam is accordingly *considering* locating an *auxiliary* studio at KFTY's offices in Santa Rosa. Moonbeam's *main* studio will be in Calistoga. Ms. Constant has corrected her deposition testimony on this point (*see* Exhibit 4), and so testified before the Presiding Judge on July 21, 1993.

⁴ This was Ms. Constant's first time testifying in a deposition.

22. Further debate on this point is senseless. Even if awarded the construction permit in this proceeding, Ms. Constant could not locate her main studio outside the principal community contour, where she *lives*, without a Commission waiver -- which she does not have. See 47 C.F.R. § 1125. Accordingly, Moonbeam has no motive to misrepresent this point. With respect to main studio location, Moonbeam's application was correct when submitted, has at all times been correct, and is correct today. No misrepresentation issue is warranted.

E. CIVIC INVOLVEMENT

23. Moonbeam listed among its civic activities on its April 5, 1993 Integration and Diversification Statement that Mary Constant was a member of the Calistoga Performing Arts Association. Ms. Constant testified at deposition on June 4, 1993, that the Calistoga Performing Arts Association ran out of funds in the summer of 1992.

24. Ms. Constant never resigned her membership, and testified on July 21, 1993, that she will continue her membership if the organization obtains new funding. Even if, *arguendo*, such continued membership is not cognizable, no misrepresentation was intended. Prior to the filing of Willson's enlargement petition, Moonbeam filed its Direct Case Exhibits which clearly disclosed the Association's 1992 loss of funding. As noted in *Intercontinental Radio, supra*, this type of minor discrepancy (if discrepancy it is), voluntarily disclosed, constitutes no grounds for addition of a misrepresentation issue.

**F. MR. CONSTANT'S INVOLVEMENT IN
MOONBEAM'S APPLICATION**

25. Willson argues that Mary Constant falsely testified that her husband was not involved in Moonbeam's application, and as evidence

thereof, offers a declaration stating that Mr. Constant once attended a settlement conference between Moonbeam and Willson and once telephoned Willson to discuss settlement.⁵ Willson 3Pet. at 5-6.

26. Willson again seeks to ensnare Moonbeam in a game of semantics. *Prosecution* of an application and settlement negotiations are distinct and separate pursuits.⁶ The Commission has no involvement in settlement negotiations; no disclosures regarding such negotiations in connection with settlement negotiations are required of an applicant. Thus, Willson's proffered evidence has no bearing on the accuracy of Ms. Constant's response to the question asked, at least as she understood it: *i.e.*, whether her husband was involved in Moonbeam's *application*.

27. Indeed, Willson's evidence should not even be considered by the Presiding Officer, because evidence of settlement negotiations and conduct in such negotiations is not admissible under the Commission's Rules. *See* Fed. R. Evid. 408; *Central Texas Broadcasting Co., LTD*, 92 FCC 2d 914, 917 (Rev. Bd. 1982); *Horne Industries, Inc.*, 91 FCC 2d 1193, 1195 (Rev. Bd. 1982).⁷ Although Rule 408 speaks in terms of evidence of "liability," in both cases the Review Board applied the rule in the comparative proceeding context, where liability is not at issue. The Review Board in both opinions cited the strong public policy in favor of preserving the confidentiality of settlement discussions, in order to

⁵ On redirect, Ms. Constant also clarified her testimony that she does occasionally discuss the Calistoga proceeding with her husband. *See* Willson 3Pet, Exhibit 1 at 111.

⁶ This is also evident from the Commission's 1990 Report and Order, which provides

encourage the negotiation and settlement of litigation.⁸ See also *Report and Order, surpa*, 6 FCC Rcd at 157. This beneficial policy should be broadly construed to include the participants in negotiations, and accordingly, Willson's petition in this regard should be denied.

G. MS. CONSTANT'S REALTOR'S LICENSE

28. Finally, in a grossly untimely supplement to his petition (*see* Section III, *infra*) -- served the day before hearing -- Willson alleges that Ms. Constant misrepresented her status as a licensed Realtor in California because her license was conditionally suspended on May 23, 1993 for failure to meet an educational requirement.⁹ 3Pet. Supp., *passim*. Further, in a distorted attempt to rehash his first enlargement petition, which was denied by the Presiding Officer's Memorandum Opinion and Order (FCC 93M-437), released July 2, 1993, Willson again charges that Moonbeam misrepresented Ms. Constant's employment with James Warren & Sons.¹⁰ This attempt to relitigate issues already ruled upon is clearly improper as well as untimely, and must be stricken or disregarded and denied.

⁸This policy is separate and additional to the confidentiality agreement argued by Moonbeam at the July 21, 1993 hearing which Moonbeam still maintains has been breached by the submission of this evidence.

⁹Moonbeam notes that Mr. Willson's "evidence" is inadmissible, uncorroborated hearsay in contravention of Section 1.229 of the Commission's Rules; however, in light of Ms. Constant's testimony on regarding these facts at the hearing on July 21, 1993, Moonbeam will respond to the substance of the allegations.

¹⁰The only distinction between the allegations in Willson's first enlargement petition and the current one is that the current allegation relies on Moonbeam's March 2, 1992 integration statement (which was associated with Moonbeam's March 2, 1992 amendment as of right) instead of Moonbeam's April 5, 1993 Integration and Diversification Statement, both of which were superseded by Moonbeam's Direct Case Exhibits prior to the filing of the enlargement petition.

29. Substantively, Ms. Constant has never represented that she was a full-time Realtor by profession or that she derived income from her real estate activities; the position denoted her involvement with the Calistoga community. Her testimony is consistent with that proffer. She visited the offices at least weekly to acquaint herself with the area, periodically accompanying the broker in charge of the office to tour new properties. Constant Deposition Transcript at 45-46, a copy of which is attached as Exhibit 5.

30. With respect to the “suspension” of Ms. Constant’s license, as indicated on Willson’s own exhibit, Mary Constant’s license has only been “conditionally” suspended. Her license has never been revoked and will not be revoked unless she fails to meet the continuing education requirement by November, 1995. Accordingly, her representation that she is licensed is entirely true.

31. Further, the suspension was not occasioned by any wrongdoing, but is an automatic suspension which can be automatically lifted by Ms. Constant’s fulfillment of certain educational requirements, *see* Cal. Bus. & Prof. Code § 10153.4, 10153.2 (West, 1993). Fulfillment of these requirements takes little time. In short, the occurrence of this suspension is in no way material to Ms. Constant’s application, and therefore there existed no need to disclose the suspension to the Commission at any time.

H. SUMMARY

32. Willson’s Petition fails to raise a substantial issue to be tried regarding a single material fact. His efforts to elevate typographical errors and throat-clearing to the level of perjury serve no purpose but to

underscore his intent to harass Moonbeam and deplete its resources with frivolous motions.¹¹

33. In any event, what has Willson proved? Not much! He has established that:

- 1) Moonbeam “untimely” reported a spousal broadcast interest *that Moonbeam has no legal obligation to report*;
- 2) Sixteen months ago, Moonbeam overlooked an error in its application *which Moonbeam spontaneously corrected when Ms. Constant noticed the error three months ago*;
- 3) Despite Ms. Constant’s testimony that she is not involved with her husband’s businesses, when her husband was sued *personally* as a result of his business activities, Ms. Constant was required to testify regarding a spousal consent and post-judgment discovery, and Ms. Constant was on the line with her husband during a phone call to a witness;
- 4) Ms. Constant misspoke during her deposition regarding location of Moonbeam’s proposed main studio, *which testimony she has corrected*;
- 5) Moonbeam’s post-HDO integration statement listed an organization which ran out of funds in the summer of ‘92, *which Moonbeam corrected on its direct case exhibits before Willson filed this petition*;
- 6) Mr. Constant attended a confidential settlement meeting and made a single phone call to Mr. Willson, also regarding settlement *only*; and
- 7) Ms. Constant’s real estate license has been *temporarily* administratively suspended for failure to take two brief continuing education courses.

¹¹ Moonbeam fully expects Willson to file an enlargement petition because Ms. Constant has reported her middle name as “F.” when she has subsequently testified that it is “Fairbanks.” Such would easily analogize Willson’s pecayunish approach to prosecuting its case.

34. None of the foregoing facts warrant misrepresentation issues. They are minutiae, taken out of context and blown out of proportion, and in most cases the correct facts were revealed by Ms. Constant herself. Willson's petition makes no sufficient showing of any intent to deceive, and thus the petition must be denied.

II. NO INEPTNESS ISSUE IS WARRANTED

35. In his request for an "ineptness/carelessness" issue, Willson makes no mention of the legal standard for addition of such an issue. No ineptness issue will be added unless "where an applicant's conduct has concerned relevant matters of major significance and where the conduct has disclosed a pattern of carelessness and inadvertence." *See, e.g., Sarkis, Inc., T/A Hammonton Aviation*, 58 FCC 2d 626, 627 (Rev. Bd. 1976); *Badlands Broadcasting Company*, 59 FCC 2d 717, 718 (Rev. Bd. 1976); *Media, Inc.*, 22 FCC 2d 886, 892-94 (Rev. Bd. 1970); *see also CAGAL Cellular Communications Corporation*, 6 FCC Rcd 285, 287-88 (1991) (declining to add ineptness issue against cellular applicant which had multiple minor errors in its application and errors in its financial showing, on the grounds that the errors did not make out a *prima facie* case), overruled in part on other grounds, *Dana Communications, Ltd.*, 6 FCC Rcd 5382 (1991).

36. All of Moonbeam's discrepancies have been minor, and none intentional. All have been regarding matters of little or no weight, such as the location of Ms. Constant's residence and college during the 1960's, inadvertent reference to an organization which ran out of funds, and confused (and since corrected) testimony regarding main studio location. Many errors were voluntarily corrected -- hardly a sign of ineptness. The

distortion of the evidence regarding Ms. Constant's involvement with her husband's businesses, Mr. Constant's involvement in Moonbeam's prosecution of its application, and Ms. Constant's knowledge regarding her husband's past business finances, *see* Part I, *supra*. Clearly, no ineptness issue requires hearing or trial.

III. WILLSON'S PETITION SHOULD BE DISMISSED AS UNTIMELY

37. As Moonbeam has argued in response to Willson's previous petitions, the Commission *strictly* requires petitions to enlarge issues based on newly discovered evidence *only* if filed within 15 days after "the facts are known or *could reasonably have been known* to the moving party." *Great Lakes Broadcasting, Inc.*, 6 FCC Rcd 4331, 4332 (1991). This requirement is intended to expedite the hearing process and the institution of new service, and because "no judging process could operate efficiently or accurately if an applicant is allowed to sit back and hope for a decision in its favor and to parry with an offer of more evidence when faced with an adverse decision." *Id.* at 4333, *citing Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941).

38. Untimely petitions to enlarge issues may be considered only if the petitioner shows "good cause" for the tardiness, or if the petition raises an issue of "probable decisional significance" AND "such substantial public interest importance as to warrant consideration in spite of its untimely filing." 47 C.F.R. 1.229(c); *Great Lakes, supra*, at 4332. To establish "probable decisional significance," Willson must establish that the "likelihood of proving the . . . allegations . . . is so substantial as to outweigh the public interest benefits inherent in the

orderly and fair administration of the Commission's business." *Id.*

Because as set forth in Parts I and II, *supra*, all of the issues are frivolous, Willson is unable to make such a showing under any circumstances.

39. Willson contends that his petition is timely because it was filed within 15 days of his receipt of the June 4, 1993 deposition transcript.¹² Willson 3Pet. at 1. However, Willson could easily have previously learned of many of the facts on which he relies, including:

- the location of Sonoma State University, which was already the subject of an enlargement petition three months ago;
- the discontinuation of the Calistoga Performing Arts Association, which was listed on Moonbeam's March 1992 and April 1993 integration statements, and which is located in the area in which, in his integration statement, Mr. Willson claims to have substantial business and civic contacts; and
- Ms. Constant's correction of the reference to past residence in Santa Rosa from Moonbeam's integration statement, reflected in Moonbeam's post-HDO (April 5, 1993) Integration and Diversification Statement, which was duly served on Willson's counsel when filed.

40. As a result, all of these allegations should be stricken as untimely. No good cause has been demonstrated, and no showing of decisional significance has been made. The Commission added this requirement in its 1990 *Proposals to Reform the Commission's*

¹² Willson's theories of timeliness have been somewhat "creative" throughout this proceeding. Under Willson's reading of § 1.229, an opposing applicant can re-set the clock on an alleged "misrepresentation" just by asking the question again and again. If the same answer is given, it is "new evidence" that the lie was not accidental. See Petition to Enlarge Issues, filed April 21, 1993, at 4-5. If the opponent gives a different answer, the answer is "newly discovered evidence" that the former statement was false. See Willson 2Pet. page 10. Such heatstamping should not be tolerated.

Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 157 (1990), and in connection therewith stated that “To avoid the need to try unnecessary issues, we expect ALJs and the Review Board to strictly adhere to the standards established in the rule.” *Id.* at 161. While Moonbeam is sympathetic to the Presiding Officer’s desire to resolve issues on the merits, the Commission has clearly directed that untimely enlargement petitions be rejected unless an adequate showing is made.

IV. WILLSON’S DISCOVERY REQUESTS

defined to allow a response. No evidence has been presented that Ms. Constant has any *involvement* -- another unduly vague term -- in Mr. Constant's current business, broadcast or otherwise. The only evidence Willson has presented is that Ms. Constant played a small role in litigation which, in addition to seeking to impose personal liability against her husband, related to his business activities. The only documents relevant to the inquiry are those relating to Ms. Constant's involvement in the litigation and in the events on which the litigation was based.

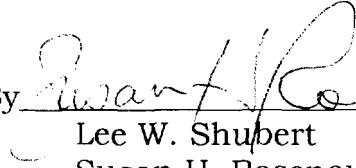
43. Finally, no grounds exist to depose Mr. Constant. Mr. Constant is not a party to this proceeding, and Ms. Constant is perfectly competent to testify to all issues involving Moonbeam's qualifications and her own conduct. Further, if either Ms. Constant or Mr. Constant are to be deposed, Moonbeam requests that such depositions be conducted in or near Calistoga, to reduce the related expenses.

CONCLUSION

44. As virtually all of the allegations in this petition reveal, Willson clearly is attempting to wage a war of attrition, using as his weapons petty, misleading and insignificant questions which clearly fail to meet the legal standards for enlargement of issues. This enlargement petition, filed on the eve of hearing, riddled with untimely and spurious allegation is an example of harassment, pure and simple. At a minimum, it should be rejected in its entirety.

Respectfully submitted,

MOONBEAM, INC.

By 
Lee W. Shubert
Susan H. Rosenau
Its Attorneys

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July 30, 1993

DECLARATION*

I have reviewed the foregoing "Opposition to Third Petition to Enlarge Issues" dated July 30, 1993, and to the best of my knowledge and belief, the statements contained therein are true and correct.

Executed under penalty of perjury this 30th day of July, 1993.

Mary F. Constant

* Executed Declaration will be filed upon receipt.